IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 483 OF 2005

Shri Digambar Krishna Karalkar ... Appellant
(Ori. Defendant No.1)

V/s

Shri Vasudev Krishna Karalkar & ors. ... Respondents
(Ori. Plaintiffs)

Mr. Kiran Joshi with Milind More for the appellant.

Mr. Sandesh Patil i/by Vikas Mahangare for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 15TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the District Judge, Sindhudurga at Oros dated 14.2.2005 allowing the appeal and decreeing the suit of the plaintiff for declaration of his exclusive ownership of the suit property i.e. original house No. 204, Village Bov, Tal. Kudal and setting aside the judgment and order passed by the Civil Judge, Jr. Divn., Kudal, dated 19.8.2003 dismissing the suit of the plaintiff.

2. The plaintiff filed the suit with allegation that House No. 204-A, B, C, D, E, F, G & H which consists of one house property but having separate several numbers located at Village Bov, Tal. Kudal, Dist. Sindhudurga is in fact one property previously bearing Grampanchayat No. 109, 128, 195 and in 1982-83 it was given House No.204. Construction of the house was started by the appellant on 7.1.1956 and he entrusted the construction to his cousin brother-in-law one Anant Baburao Kamatekar and entire expenses were borne by the appellant. From 1945, for service purpose, the plaintiff was residing at Bombay and was serving in BEST from 1947 to 1949 and then he served in Cocks and King Agents Ltd. He served at different places till 1972 and his financial condition was good. According to him, though Kamatekar was resident of Village Parule, he resided at Bav during the period of construction of the house as he himself was
a good carpenter and reliable relative. He used to inform the progress of construction to the appellant from time to time by letters and the fund was provided by the plaintiff alone. According to him, since it was constructed by his exclusive expenses, it was owned by him alone. It is the case of the plaintiff that, at the time of construction, plaintiffs' father Krishna was

alive and the land under the house was in his name and since he was elder and was residing in the village, the application for permission for construction was given in the name of Krishna Karalkar. Thereafter construction was over. The name of Krishna Karalkar was entered in the suit property. It is the case of the plaintiff that, after the death of Krishna, respondent No.1 who is brother of the plaintiff, got his name entered into the property which fact came to know in the year 1996 and dispute started, as a result of which suit came to be filed. the suit is filed by the defendants on the ground that the suit house located is the joint family property belong to joint family and, as such, the property in question was belonged to the joint family. Hence, the suit was sought to be dismissed.

3. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to establish that he had constructed property by his own expenses and it was his separate property. It was also held that the plaintiff failed to prove that the name of Krishna was entered into the property nominally and actually the property belong to the joint family and it was also held that the property belong to the joint family. As such, the suit came to be

dismissed.

4. The appeal was preferred to the District Court, Oros. The lealrned District Judge, after hearing both parties, came to the conclusion that, in fact the plaintiff had proves his case of exclusive ownership of the house property and allowed the appeal setting aside the order passed by the Trial Court. Hence the present appeal.

5. I have heard the learned counsel for both parties. Perused the record.

It is to be noted that the plaintiff had led extensive evidence on record, oral as well as documentary in order to show as to how he had spent the construction cost and got the house property constructed through his cousin brother-in-law Kamatekar who is also examined as a witness. In my view, the documentary evidence, such as, letters etc. alongwith the testimony of Kamatekar itself is sufficient to show that the expenses for the house property were exclusively made by the plaintiff and for his benefit. The learned counsel for the appellant sought to rely on the fact that the amount of Rs.100/- was provided by father of plaintiff Krishna and

that aspect would show that the house was constructed by joint efforts. However, it is to be noted that mere financial help of Rs.100/- in construction of the entire house would not make property as joint family property especially when there is no evidence in rebuttal to show that the property was constructed by joint efforts of the concerned parties nor it would be legal to raise presumption that the said house property was part and parcel of the joint family property alongwith the agricultural lands which are admittedly a part of the joint family property.

6. The learned counsel for the appellant also sought to put reliance on various judgments of the Supreme Court to butress his argument. Referring to the case of **Madanlal & ors. v/s Yoga Bai, reported in A.I.R. 2003 S.C. 1880,** it was sought to argue that the property in question raised and developed by joint efforts of father and his sons would be joint family property amenable for partition among father and his sons. However, in the present case, as noted earlier, it is clear that mere contribution of Rs.1000/- given by the father to the son for constructing the house, would not make the entire property as joint family property especially when plaintiffs' evidence is sufficient to show that the

expenses for construction were made exclusively by him with the help of some other relative. The learned counsel for the appellant also sought to put reliance on the ruling of the Single Judge in the case of **Gulabrao Maruti Bhagat v/s Bhagwan Nana Bhagat & ors., reported in 2001 (2) Mh.L.J. 665,** which deals with presumption of jointness of family and establishes the family that continues joint until contrary is proved. In my view, this ruling is absolutely not applicable to the present case, because there is no issue involved of the joint state of family in this dispute. What is in dispute, the identity of the house property and the property is exclusively owned by the plaintiff or belong to the joint family.

7. The learned counsel for the appellant also brought to my notice the factum of decision of earlier suit amongst the parties which had decided the question of right, title and interest in respect of the suit land belonging to the joint family property. However, as noted earlier, we are not concerned in this appeal regarding the right, title and interest or any exchange of the properties qua the joint family lands. We are concerned in this appeal regarding the question, whether the suit house standing in joint family land is

self-acquired property of the plaintiff or not. The entire evidence on record shows that it is self-acquired property and the learned lower appellate Court appears to have appreciated the evidence correctly in proper perspective. Moreover, no substantial question of law appears to be involved in this case, especially when evidence on record has settled the dispute in clear terms.

8. In the result, the appeal stands dismissed with no order as to costs. Consequently, the Civil Application No. 887 of 2005 also stands dismissed with no order as to costs.

9. At this stage, the learned counsel for the appellants sought stay of this order. In view of the facts and circumstances, the order shall not be effective for the period of six weeks.

(P.V. Kakade, J.)